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**\*E-FILED - 4/15/09\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS HARRIS,

No. C 01-21193 RMW (PR)

Petitioner,

ORDER DENYING SECOND MOTION  
FOR APPOINTMENT OF COUNSEL

v.

SYLVIA GARCIA,

Defendant.

\_\_\_\_\_/ (Docket No. 67)

Petitioner, a California state prisoner, filed a pro se petition for a writ of habeas corpus. On September 18, 2007, the court issued a second order to show cause to respondent as to why the petition should not be granted. For the reasons set forth below, the court DENIES petitioner's second motion to appoint counsel (docket no. 67) without prejudice.

**DISCUSSION**


Petitioner requests appointment of counsel because he wants to protect his constitutional rights. However, the Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S. C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner if "the court determines that the interests of justice so require," the courts have made appointment of counsel the exception rather than the rule. Appointment is mandatory

1 only when the circumstances of a particular case indicate that appointed counsel is necessary  
2 to prevent due process violations. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.  
3 1986).

4         Petitioner has thus far been able to adequately present his claims for relief.  
5 Respondent has been ordered to produce the state record, which may include petitioner's  
6 state appellate briefs prepared by counsel. No evidentiary hearing appears necessary in this  
7 case, nor are any other extraordinary circumstances apparent. Accordingly, the court  
8 concludes that appointment of counsel is not necessary at this time. Petitioner's second  
9 motion for appointment of counsel (docket no. 67) is DENIED without prejudice.

10         IT IS SO ORDERED.

11  
12 Dated: 4/14/09

  
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RONALD M. WHYTE  
United States District Judge